IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3887 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R B PARIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3887 of 1988

MR MR ANAND for Petitioner No. 1

Mr, N.D.Gohil, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/09/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the order dated 28th June, 1986 by which the petitioner is ordered to be reverted to his original post, a Class II post from that of the Gujarat Administrative Services Class I post which he was holding on ad hoc basis.

2. It is the case of the petitioner that he was discharging the duties as Project Officer-cum- Taluka Development Officer, Class I post, in the Gujarat Panchayat Service to which post he was promoted by order dated 28th August, 1986. The petitioner, however, came to be reverted to his original post in Class II by the impugned order dated 28th June, 1986 which the petitioner has challenged in the present petition. The main ground of challenge in the petition is that the petitioner's service record is clean, and despite the petitioner having not received any adverse remarks, he is being reverted while his juniors are retained in the promotional post.

3. From the order dated 28th August, 1986 by which the petitioner was promoted to the Class 1 post, it is clear that promotion was purely on ad hoc and temporary basis. The impugned order dated 28th June, 1988 also records that the petitioner was promoted on purely ad hoc basis, and since the Government does not find any justifiable reason to continue the said ad hoc promotion, the ad hoc promotion of the petitioner is withdrawn with effect from 1-7-1988, and he is being reverted to his original post in Class II cadre.

4. The learned Addl. Government Pleader Shri N..D.Gohil appearing for the respondents has pointed out from the affidavit-in-reply filed by the Government that the promotion of the petitioner was purely on ad hoc basis and the same was subject to consultation with the Gujarat Public Service Commission. The petitioner was promoted on ad hoc post on account of administrative exigency as it was necessary to fill up certain vacant posts. It is further pointed out in the said affidavit-in-reply that the criteria for promotion to the post of P.O.-cum- T.D.O is not only seniority, and such a promotion on regular basis cannot be granted unless the person is found fit for such promotion. It is also stated that the criteria for promotion is merits, and the petitioner, therefore, cannot claim the same as a matter of right. It is further stated in the said affidavit that the case of the petitioner was referred to the Gujarat Public Service Commission for consultation, and after careful consideration, the G.P.S.C. was of the opinion that the petitioner should not be promoted to the Class I post. In that view of the matter, the respondents contend that retention of juniors who have been found fit for promotion cannot be utilized by the petitioner to retain his promotion. It is, therefore, the contention of the learned Advocate for the

respondents that the order of reversion is proper and legal, and that there is no discrimination meted out to the petitioner. In the rejoinder, the petitioner has contended that the petitioner was not communicated any adverse remarks, and therefore, the conclusion of him having been found unfit for promotion is not correct.

5. In the present petition, the petitioner has challenged his reversion from ad hoc promotion. It is not in dispute that earlier on 28th August, 1986 the petitioner was promoted on purely ad hoc and temporary basis, and the case of the petitioner was not considered by the regular D.P.C. to find out the fitness of the petitioner for such a promotion. Ad hoc promotion cannot be a matter of right and if the petitioner is ultimately not promoted pursuant to the recommendations of regular D.P.C, in this case the G.P.S.C., the petitioner cannot have any grievance about the withdrawal of his ad hoc promotion. The petitioner, in the present petition, has nowhere challenged his non promotion on regular basis. It is, therefore, not possible or necessary for this Court to go into the question of the decision of the G.P.S.C. by which the petitioner was not found fit for promotion on regular basis to the Class I post. The learned A.G.P. submits that the petitioner has superannuated from service in the year, 1991. That may be one of the reasons for the petitioner's indifference towards the present petition.

6. In the result, I find no merit in the petition, and the same is rejected. Rule is discharged. Interim relief granted earlier is vacated. No orders as to costs.

(Akil Kureshi,J.)

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